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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,763	10/16/2000	Daniel D. Rockey	245-55928	4232

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EXAMINER

SWARTZ, RODNEY P

ART UNIT PAPER NUMBER

1645

DATE MAILED: 03/29/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/673,763

Applicant(s)

ROCKEY ET AL.

Examiner

Rodney P. Swartz, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Claims 1-18 are drawn to a plurality of disclosed patentably distinct polypeptides comprising materially different amino acid sequences as evidenced by separate SEQ ID Numbers. The separate polypeptides bear distinct structural or biochemical properties as evidenced by the separate SEQ ID Numbers. **Therefore, each disclosed patentably distinct polypeptide is considered a separate invention.**

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing which inventions are obvious variants of each other or clearly admit on the record which inventions are obvious variants of each other. If the inventions are deemed obvious variants of each other, then if the examiner finds one of the inventions unpatentable over the prior art, the evidence submitted by applicant or admission of record by applicant may be used in a rejection under 35 U.S.C. §103(a) of the other inventions.

### **Restriction**

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Under Rule 13, in addition to an independent claim for a given product (individual protein) an applicant is entitled to an independent claim for a use of said product. In the instant

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claims, the first claim for a use is a method of vaccination while a second use is a method of detection (M.P.E.P. §1850).

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

- Group I. Claims 1-12, drawn to p242 *C. tracomatis* protein (SEQ ID NO:2), DNA (SEQ ID NO:1), method of making, and first method of use (vaccination).
- Group II. Claims 1-12, drawn to TroA *C. tracomatis* protein (SEQ ID NO:4), DNA (SEQ ID NO:3), method of making, and first method of use (vaccination).
- Group III. Claims 1-12, drawn to TroB *C. tracomatis* protein (SEQ ID NO:6), DNA (SEQ ID NO:5), method of making, and first method of use (vaccination).
- Group IV. Claims 1-12, drawn to IncB *C. psittaci* protein (SEQ ID NO:10), DNA (SEQ ID NO:9), method of making, and first method of use (vaccination).
- Group V. Claims 1-12, drawn to IncC *C. psittaci* protein (SEQ ID NO:12), DNA (SEQ ID NO:11), method of making, and first method of use(vaccination).
- Group VI. Claims 5-12, drawn to IncA *C. psittaci* protein (SEQ ID NO:8) and first method of use(vaccination).
- Group VII. Claims 5-12, drawn to IncA *C. trachomatis* protein (SEQ ID NO:14) and first method of use(vaccination).

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- Group VIII. Claims 5-12, drawn to IncB *C. trachomatis* protein (SEQ ID NO:16) and first method of use(vaccination).
- Group IX. Claims 5-12, drawn to IncC *C. trachomatis* protein (SEQ ID NO:18) and first method of use(vaccination).
- Group X. Claims 13-17, drawn to second method of use (detection) of p242 *C. tracomatis* protein (SEQ ID NO:2).
- Group XI. Claims 13-17, drawn to second method of use (detection) of TroA *C. tracomatis* protein (SEQ ID NO:4).
- Group XII. Claims 13-17, drawn to second method of use (detection) of TroB *C. tracomatis* protein (SEQ ID NO:6).
- Group XIII. Claims 13-17, drawn to second method of use (detection) of IncA *C. psittaci* protein (SEQ ID NO:8).
- Group XIV. Claims 13-17, drawn to second method of use (detection) of IncB *C. psittaci* protein (SEQ ID NO:10).
- Group XV. Claims 13-17, drawn to second method of use (detection) of IncC *C. psittaci* protein (SEQ ID NO:12).
- Group XVI. Claims 13-17, drawn to second method of use (detection) of IncA *C. tracomatis* protein (SEQ ID NO:14).
- Group XVII. Claims 13-17, drawn to second method of use (detection) of IncB *C. tracomatis* protein (SEQ ID NO:16).

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Group XVIII. Claims 13-17, drawn to second method of use (detection) of IncC *C. tracomatis* protein (SEQ ID NO:18).

Group XIX. Claim 18, drawn to method of treatment of *Chlamydial* infection.

The inventions listed as Groups I-XIX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: .

Inventions I-IX are drawn to stucturely (as evidenced by different SEQ ID NO) and functionally distinct proteins from two different microorganisms, i.e., *C. psittaci* and *C. trachomatis*.

Inventions X-XVIII are drawn to stucturely (as evidenced by different SEQ ID NO) and functionally distinct proteins from two different microorganisms, i.e., *C. psittaci* and *C. trachomatis*.

Inventions I-IX are distinct from Inventions X-XVIII because Inventions X-XVIII are drawn to a second use (detection) from Inventions I-IX (vaccination).

Invention XIX is distinct from Inventions I-XVIII because Invention XIX is drawn to a third use (treatment) while Inventions X-XVIII are drawn to a second use (detection) from Inventions I-IX (vaccination).

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and because while the searches

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may overlap, the searches are not coextensive, restriction for examination purposes as indicated is proper.


Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.

  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER

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March 27, 2002